

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:




Reg. No: 2010-48557

Issue No: 2009; 4031



ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an In-Person hearing was held on September 23, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by .

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retroactive Medical Assistance (retro MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On April 16, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits as well as Retroactive Medical Assistance benefits for January thru March 2010, alleging disability.
- (2) On May 10, 2010, the Medical Review Team denied claimant's application stating that claimant's impairments lack duration.
- (3) On May 17, 2010, the department caseworker sent claimant notice that his application was denied.
- (4) On August 12, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On August 24, 2010, the State Hearing Review Team again denied claimant's application stating that they had insufficient evidence and requesting a psychological evaluation and internist evaluation.
- (6) The hearing was held on October 23, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) Additional medical information was submitted and sent to the State Hearing Review Team on November 24, 2010.
- (8) On December 9, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis decision: the claimant retains the capacity to perform at least unskilled medium work. The claimant's impairments do not meet SAUS equals the intentional severerity of the Social Security listing. The medical evidence on record indicates that the claimant retains the capacity to perform unskilled medium work. This may be consistent with past relevant work. However, there is no detail description of past work to determine this. In lieu of denying benefits is capable of performing past work a denial to other work based on a vocational rule will be used. Therefore, based on the claimant's vocational profile of closely approaching advanced age with 12 years of education in the unskilled work history MAP is denied using vocational rule 203.21 as a guide. Retroactive MAP was considered in this case and is also denied. SDA is denied per PEM261.
- (9) Claimant is a 53-year-old man whose birth date is October 23, 1956. Claimant is 5' 9" tall and weighs 197 pounds. Claimant is a high school graduate and attended Lansing Community College for 2 years and studied Automotive. Claimant is able to read and write and is able to add, subtract, multiply and count money.
- (10) Claimant last worked September 2009 at Value Land driving trucks, stocking and pricing where he worked for 14 years. Claimant has also worked at Meijers.
- (11) Claimant alleges as disabling impairments: Arthritis, carpal tunnel syndrome, learning disability, lower back pain, asthma, los of memory, laser surgery on the right leg, and constant asthma attacks.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges

Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combinations of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);

- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since September 2009. Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

In addition, claimant does receive unemployment compensation benefits. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially unemployed. They must have an approvable job separation. Also, they must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. This Administrative Law Judge finds that claimant has not established that he has a severe

impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more or have kept him from working for a period of 12 months or more. Claimant did last work September 2009. Claimant does receive unemployment compensation benefits in the amount of [REDACTED] every 2 weeks as of the date of hearing. Claimant should be disqualified from receiving disability based on the fact that he does hold himself as able to work.

The subjective and objective medical evidence on the record indicates that claimant testified that he lives with his sister because he's homeless and he's single with no children under 18. Claimant receives [REDACTED] in unemployment compensation benefits every 2 weeks. Claimant does receive food assistance program benefits. Claimant does not have a driver's license he usually catches the bus 5 times per week and catches the bus to the library and the grocery store. Claimant testified that he does cook mostly microwaveable foods and that he does grocery shop but he can't see very well. Claimant testified that he used to work on cars and he usually watches television 8 hours per day now. Claimant testified the he can stand from 15- 20 minutes at a time, and sit for 15 minutes at a time. Claimant testified that he can walk a half a block but he cannot squat. Claimant testified that he can bend at the waist, shower and dress himself and tie his shoes but not touch his toes. Claimant testified that his knees hurt. Claimant stated that his level of pain on a scale from 1-10 without medication is a 10 and with medication is an 8 and that he has arthritis in his hands and arm and he is right handed and his legs and feet are fine. Claimant testified the heaviest weight he can carry is 20lbs, and that he quit smoking cigarettes in January 2010. Claimant testified he drinks 3 beers a week and usually drinks 24oz beer and that he stopped smoking marijuana about 15 years before the hearing. Claimant testified he baths, gets up to watch the news, washes, eats, prepares food and dresses. Claimant testified he helps his handicapped niece, watches television and looks for a place to stay.

The Medical Examination Report on October 27, 2010, indicates that a physical examination the patient is well developed well nourished black male in no acute distress. He ambulates on his own without difficulty. His height is 5' 8" tall. His weight is 200lbs. Blood pressure 148/100, pulse 88 and regular, respiratory rate 16. His Heent is norm cephalic, atraumatic. Pupils equal and round and reactive to light and accommodation. Extraocular muscles are in tact. Sclerae were clear. Conjunctivae were pink. Fundi was within normal limits. Tympanic membranes were clear bilaterally. Nasal Mucosa is pink without polyps. Pharynx is moist without erythema or exudate . The neck was supple with free range of motion. No thyromegaly, lymphadenopathy or JVD was noted. Carotid upstrocks are good without bruits. The lungs there are a few scattered wheezes throughout the lung fields. There are no raies or rhochi noted. There is normal resonance to percussion. The cardiovascular area the regular rate and rhythm without murmurs. Normal S1/S2. No S3 or S4. No rubs or thrills are appreciated. In the back there was some mild tenderness over the left lumbar paraspinal muscles. Range of motion is within normal limits. There is no straight leg raise. No CVA tenderness. The abdomen had good bowel sounds in all four quadrants. No masses or bruits are appreciated. No organomegaly is noted. In the extremities n cyanosis, clubbing, or edema is noted. There are good peripheral pulses palpated distally. In the musculoskeletal area there is no evidence of inflammation or tenderness in the joints. The neurological area the patient is alert and oriented to time, person, and place.

Cranial nerves II through XII are grossly intact. Motor exam shows normal power and tone throughout. Sensory exam is within normal limits. Deep tendon reflexes were 2+ and equal bilaterally. Cerebellar function is intact. The pulmonary function testing was done he did give adequate maneuvers. His pre-bronchodilator test was within normal limits. Claimant has some mild tenderness in his lower back and his range of motion is normal and there was no evidence of radiculopathy. There was some elevated blood pressure. (New information Pages 1, 2, & 3)

A second last full evaluation dated October 12, 2010, indicates that claimant was oriented to time, place and person. He could recall 5 digits forward and 3 digits backwards and he can recall 2 out of 3 objects after a 3 minute time lapse. He knew his birthdate and could correctly name 3 recent past presidents. He exhibited borderline capabilities for general fund of information. He could correctly name five large cities, two currently famous people, and no current events. He could complete Serial 7's. When asked to do so, he said, "I can't do that." He exhibited borderline capabilities for abstract reasoning. He stated that the proverb, "The grass is greener on the other side of the fence" meant, "It's greener on the other side." He stated the proverb, "Don't cry over spilled milk: meant, "If the milk is spilled, don't cry." He indicated that a bush and a tree were alike in that they were both the same color. He indicated that they were different in size. He exhibited borderline capabilities for social judgment and comprehension. He stated that if he found a stamped, addressed envelope in the street, he "probably wouldn't do nothing with it." He stated that if he were the first person in a theater to discover a fire, he would "get up and leave." He was diagnosed with a Major Depressive Disorder, Alcohol Dependence, Cocaine Dependence in Early Remission. It was recommended that he receive assistance in the management of any funds until he can remain alcohol-free and drug-free for one full year. His prognosis was guarded. (Page 6-9) Administrative Law Judges consider all the Medical documents contained in the file for making this decision.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: Depression, and loss of memory.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. There is **no** mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. The claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. **Under the Medical-Vocational guidelines, a person who closely approaching advance age at 53, with more than a high school education and an unskilled work history who is limited to light work is not considered disabled.**

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The tier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Claimant's testimony and the information indicate that claimant has a history of tobacco, drug, and alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because his substance abuse is material to his alleged impairment and alleged disability.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

